

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	CC Docket No. 02-6
Request for Review of Decision of)	
Universal Service Administrator and)	
Petition for Waiver by)	
)	File No. FCC Form 471 Application
Espanola Public School District)	Number 1031739
)	
Schools and Libraries Universal Service)	
Support Mechanism)	
)	

To: Federal Communications Commission

**ESPANOLA PUBLIC SCHOOL DISTRICT
REQUEST FOR REVIEW AND PETITION FOR WAIVER**

Espanola Public School District (“EPSD” or “District”), pursuant to Section 54.719(b)-(c) of the Federal Communications Commission’s (“FCC”) rules,¹ hereby requests review of the action taken by the Universal Service Administrative Company (“USAC”) with respect to the above-captioned application.

As discussed more fully below, EPSD requested and USAC committed E-rate program funds for eligible products and services. When the District prepared to invoice USAC, it had difficulty submitting the newly required FCC Form 498 – Service Provider and Billed Entity Identification Number and General Contact Information Form (“Form 498”). Though it ultimately submitted the form on the final day of the deadline, USAC failed to process the Form 498 information in time. As a result, EPSD was unable to invoice USAC for the requested equipment prior to the deadline. USAC denied EPSD’s reimbursement requests and its subsequent appeal.

¹ 47 C.F.R. § 54.719(b)-(c) (permitting parties aggrieved by an action taken by the Administrator, after seeking review from the Administrator, to seek review from the Commission) (requiring parties seeking waivers of the Commission’s rules to seek relief directly from the Commission).

The District respectfully requests that the Commission (1) reverse USAC's decision on appeal, (2) direct USAC to extend the last date to invoice or otherwise allow EPSD to resubmit invoices, and (3) to the extent necessary, waive Section 54.514(a),² Section 54.720(a),³ and any other of the Commission's rules as are necessary to grant the requested relief. Given the facts of this case and the significant hardship that would accompany an adverse decision, there are ample grounds to reverse USAC's decision and, if necessary, grant the requested waiver.

I. STATEMENT OF THE DISTRICT'S INTEREST IN THE REQUEST FOR REVIEW AND PETITION FOR WAIVER

Section 54.719(b) of the Commission's rules permits any party aggrieved by an action taken by the Administrator, after seeking review from the Administrator, to seek review from the Commission. In this case, EPSD is directly aggrieved by the Administrator's failure to timely process the required Form 498, its decision to deny reimbursement, and its determination on appeal. EPSD initially sought review from USAC, and USAC denied the appeal.

II. BACKGROUND

On March 25, 2015, EPSD filed an FCC Form 471, requesting E-rate program discounts for internal connections equipment (switches, uninterruptable power supplies, cabling, installation, and configuration). The application included 13 FRNs and a total funding commitment request of \$478,600.89. On December 11, 2015, USAC issued a Funding Commitment Decision Letter, approving the application.

As the District prepared to invoice USAC, it had difficulty submitting the newly required Form 498 in the E-rate Productivity Center ("EPC").⁴ Eventually, on the morning of the May 30, 2017 invoice deadline, EPSD successfully submitted the form.⁵ The District then provided USAC with all of the

² 47 C.F.R. § 54.514(a) (requiring applicants to submit invoices to the Administrator within 120 after the last date to receive service).

³ 47 C.F.R. § 54.720(a) (requiring parties seeking review or waiver by the Commission to file such requests within 60 days from the date the Administrator issued a decision).

⁴ The declaration of Andrew Trujillo, IT Director at Espanola Public School District, is attached as Exhibit A.

⁵ FCC Form 498 (Form Number 443022689) is attached as Exhibit B.

information and documentation necessary to verify its banking information. Because it was the final day on which it could submit invoices, EPSD also called USAC to request that it process the District's information that day. A USAC representative explained that, although the District had provided all of the required information, it was unable to issue a Form 498 ID and that it would take days to process the paperwork.

That same day, and during normal business hours, EPSD reached out to USAC once more, explaining the situation and requesting that it quickly process the information. This time, a representative informed EPSD that the department assigned to process Form 498 information had closed for the day. It was approximately 4:00 p.m. ET.

The next day, May 31, 2017, USAC processed the information and issued the Form 498 ID. Though it was one day beyond the invoice deadline, EPSD immediately submitted FCC Forms 472 for the internal connections equipment. On June 1, 2017, the District received a remittance statement informing it that USAC had denied reimbursement for all 13 funding requests listed on the application. USAC provided the following explanation in the notification: "Invoice Received Date [5/31/2017] Later Than FCC Extension Date [5/30/2017]."

On July 26, 2017, the District filed an appeal with USAC. Because the appeal involved a funding year 2015 application – predating the EPC system – EPSD filed the appeal electronically via email. Months passed without a decision from the Administrator. Finally, on February 1, 2017, the District contacted USAC's customer service division seeking an update. USAC informed the District that the appeal had been denied on August 18, 2017.

Neither EPSD nor its designated E-rate contact received the Administrator's decision letter. In fact, the District received the correspondence only upon request to the customer service division. When the District finally received the notification letter, the 60-day deadline to appeal USAC's decision had long passed.⁶

⁶ A copy of the Administrator's Decision on Appeal, dated August 18, 2017, is attached as Exhibit C.

III. ARGUMENT

A. The Commission Should Reverse USAC's Decision on Appeal

The District does not dispute the explanation provided in the remittance statement; it did in fact submit the invoices at issue one day beyond the filing deadline. However, it was the SLD's inability to timely process the Form 498 information that led to the late submission. The Commission should therefore reverse USAC's decision on appeal.

EPSD adhered to all applicable program rules and deadlines in its attempt to collect reimbursement. The District submitted the Form 498 prior to the invoice deadline. It provided all of the requested information and documentation needed to verify its banking information. It even reached out to the SLD on two separate occasions, explaining the urgency of the situation and requesting that it quickly process the information. Finally, although USAC was unable to process the Form 498 in time, EPSD submitted invoices as soon as the form was processed, one day after the deadline.

There is no specified time by which applicants must submit the Form 498. Nevertheless, EPSD submitted its form at 10:03 a.m. ET on May 30, 2017. And it was well within standard business hours each time the District contacted the SLD, imploring it to process the information necessary. While the District, admittedly, submitted the form on the final day of the deadline, it was reasonable for it to assume that USAC might process the information during standard 9 a.m.- 5 p.m. operating hours.

B. If Deemed Necessary, a Waiver of Commission Rules is Appropriate

Given the facts and circumstances of this case, good cause exists for the Commission to waive the invoice filing deadline in Section 54.514(a) of its rules. The Commission has made clear that such requests will be denied unless petitioners demonstrate extraordinary circumstances justifying a waiver.⁷ The District contends that USAC's failure to timely process the Form 498 in this case constitutes

⁷ *Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.: Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3836, para. 8 (WCB 2016).

extraordinary circumstances outside of its control. USAC must process the form and issue the requisite Form 498 ID before applicants may submit invoices. The District submitted the Form 498 on the final day of the deadline, but USAC failed to process the form and/or issue the Form 498 ID. EPSD, therefore, could not have submitted invoices prior to the deadline.

Waiver of the 60-day appeal deadline in Section 54.720(a) of the Commission's rules is also appropriate. The Commission has routinely granted such waivers for petitioners filing appeals outside of the deadline. For example, the Commission recently approved a waiver submitted by Gestalt Community Schools in which the petitioners missed the appeal deadline because of an error and not a failure to adhere to core program requirements.⁸ In this case, the District failed to file the instant request/petition within the 60-day window because it never received notification from USAC that it had denied the underlying appeal. The District was simply unaware that another appeal was necessary, or even an option.

The application in question was filed in funding year 2015 and predated the EPC system and appeal submission tool. Accordingly, the District filed the underlying appeal electronically via email. When appeals are submitted to the Administrator by email, applicants do not receive a confirmation email containing any identifiable information; nor are they able to check on the status of the appeal online. Instead, USAC mails a copy of the decision letter to the filing party. However, in this case, EPSD's designated E-rate contact has found no record of the decision letter despite careful searching. And with no way to check the status of the appeal, it is not inconceivable that EPSD was unaware USAC had decided the appeal.

Finally, considerations of hardship and equity justify a waiver of the Commission's rules. If USAC's decision on appeal is enforced, EPSD stands to lose \$466,715.00 in much needed E-rate funding. Such a result would prove devastating to the District and the students it serves. It would further strain EPSD's already limited resources. More importantly, it would significantly impact the District's ability to provide eligible services to its classrooms. Permitting USAC's decision to stand would also be

⁸ *Request for Review and/or Waiver of Decision of the Universal Service Administrator by Gestalt Community Schools*, Docket No. 02-6, DA 17-928 (2017).

particularly inequitable in this case, where the applicant submitted necessary forms prior to the Commission-established deadline, and USAC failed to timely process the information.

IV. RELIEF SOUGHT

For the foregoing reasons, the District respectfully requests that the Commission (1) reverse USAC's decision on appeal, (2) direct USAC to extend the last date to invoice or otherwise allow EPSD to resubmit invoices for the 13 funding requests on its funding year 2015 application, and (3) to the extent necessary, waive Section 54.514(a), Section 54.720(a), and any other of the Commission's rules as are necessary to grant the requested relief.

Respectfully submitted,

Andrew Trujillo
IT Director
andrew.trujillo@k12espanola.org
(505) 927-8283

Espanola Public School District
714 Calle Don Diego
Espanola, NM 87532

March 7, 2018

Exhibit A


**DECLARATION OF ANDREW TRUJILLO
ON BEHALF OF
ESPANOLA PUBLIC SCHOOL DISTRICT**

1. I am Andrew Trujillo, the IT Director and principal E-rate contact for Espanola Public School District ("EPSD"), a public-school system located in Espanola, New Mexico.
2. The purpose of my declaration is to verify the following facts: (1) EPSD submitted the FCC Form 498 on the last date to invoice; (2) numerous requests were made to USAC to promptly verify bank information and process the form; (3) EPSD timely filed a letter of appeal to USAC; and (4) at no time did EPSD receive a copy of the Administrator's appeal decision letter; nor did it receive any other notification that the appeal had been decided.
3. On the morning of May 30, 2017, I submitted and certified the Form 498 in EPC. EPSD also provided to USAC all of the requested information and documentation.
4. Because it was the last date to file invoices, I called USAC to request that it process the information that day. A USAC representative informed me that USAC could not issue the required Form 498 ID and that it would take days to process the paperwork. That same day, at around 4:00 p.m. ET, I reached out to USAC again, but USAC informed me that the department responsible for processing the Form 498 information had closed for the day.
5. USAC processed the information and issued the Form 498 ID on May 31, 2017, one day after the invoice filing deadline, and invoices were submitted to USAC that same day.
6. On July 26, 2017, I filed an appeal in EPC.
7. I did not receive an appeal acknowledgement letter or decision letter from USAC. To the best of my knowledge and belief, neither EPSD nor any individual employed by EPSD received any notification that the appeal had been decided. Until requesting a copy of the decision letter on February 1, 2017, I was unaware that USAC had denied the appeal.

I hereby declare and affirm that the foregoing is true and correct to the best of my knowledge and belief.



Andrew Trujillo



Date

Exhibit B



FCC FORM 498

Form #443022689

EA16-49801

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Organization Information

Name: ESPANOLA PUBLIC SCHOOL DIST

Mailing Address: 714 CALLE DON DIEGO
ESPANOLA, RIO ARRIBA, NM 87532-3414

Doing Business As: Espanola Public School Dist

Federal EIN: 856000289

Dun and Bradstreet Number (DUNS):
159374156

FCC Registration Number: 0011056181

Holding Company

Name:

Federal EIN: 856000289

General Financial Contact

Name: Andrew Trujillo

Title: IT Director

Phone: 505-927-8283 Ext

Email: andrew.trujillo@k12espanola.org

Physical Address: 714 CALLE DON DIEGO
ESPANOLA, RIO ARRIBA, NM 87532-3414

Remittance Contact

Same as the General Financial Contact?: No

Name: Maria Fidalgo

Title: Businiess Office Director

Phone Number: 505-367-3303 Ext

Email Address: maria.fidalgo@k12espanola.org

Financial Institution

Remittance Financial Institution: Century Bank

ACH Financial Institution Number:

XXXXXXXXXX

Financial Institution Account Number for ACH:

XXXXXXXXXX

Billed Entity Number/FCC Form 498 Association

Billed Entity Number	Billed Entity Name
143278	ESPANOLA PUBLIC SCHOOL DIST

Service Identification

Principal Communication Type: School/Library or other Billed Entity Recipient

Certifications

I certify that I am a School or Library Official of the above-named entity, and that I am authorized to submit this FCC Form 498 data on behalf of the above named entity.

Certifying Officer

Name: Andrew Trujillo

Phone: 505-927-8283 Ext



FCC FORM 498

Form #443022689

EA16-49801

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Email: andrew.trujillo@k12espanola.org

Certified Timestamp

5/30/2017 10:03 AM MDT

Exhibit C

Andrew Trujillo
Espanola Public School Dist
714 Calle Don Diego
Espanola, NM 87532

Billed Entity Number: 143278
Form 471 Application Number: 1031739
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2015-2016

August 18, 2017

Andrew Trujillo
Espanola Public School Dist
714 Calle Don Diego
Espanola, NM 87532

Re: Applicant Name: ESPANOLA PUBLIC SCHOOL DIST
Billed Entity Number: 143278
Form 471 Application Number: 1031739
Funding Request Number(s): 2806228
Your Correspondence Dated: July 27, 2017

After review of the information and documentation provided, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2015 FCC Form 472 (BEAR) Notification Letter for the FCC Form 471 Application and funding request number(s) (FRN(s)) referenced above. This letter provides an explanation for USAC's decision. The date of this letter also begins the sixty (60) day time period for appealing this decision. If your Letter of Appeal included more than one FCC Form 471 Application Number, please note that you will receive a separate decision for each funding application.

Funding Request Number(s): 2806228
Decision on Appeal: **Denied**
Explanation:

- Invoices must be postmarked no later than 120 days after the last date to receive service, or 120 days after the date of the Form 486 Notification Letter, whichever is later. You did not demonstrate otherwise in your appeal. Therefore, your appeal is denied.

If you wish to appeal this decision, you may file an appeal pursuant to 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:
<http://www.usac.org/sl/about/program-integrity/appeals.aspx>.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company